

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EXPEREXCHANGE, INC.,

Case No. C-08-03875 JCS

Plaintiff(s),

v.

DOCULEX, INC., ET AL.

Defendant(s).

**ORDER DENYING MOTION TO ALTER  
OR AMEND JUDGMENT RENDERED  
ON DEFENDANTS' SUMMARY  
JUDGMENT MOTIONS AND RELATED  
PLAINTIFF'S MOTION [FRCP 59(e)]  
[Docket No. 100]**

**I. INTRODUCTION**

In this case, ExperExchange alleged that DocuLex's incorporation of ExperExchange's optical character recognition ("OCR") software into some of DocuLex's document management software products exceeded the scope of the license agreement between the parties. In an order filed November 16, 2009 ("the Summary Judgment Order"), the Court granted summary judgment in favor of Defendants and denied Plaintiff's motions to file a first amended complaint and for additional discovery under Rule 56(f) of the Federal Rules of Civil Procedure.<sup>1</sup> Plaintiff now brings a Motion to Alter or Amend Judgment Rendered on Defendants' Summary Judgment Motions and Related Plaintiff's Motion [FRCP59(e)] ("Motion to Amend Judgment"), asserting that the Court should reconsider its decision in light of "new" evidence that it uncovered after Plaintiff filed its opposition brief.

For the reasons stated below, the Motion to Amend Judgment is DENIED. The hearing on the Motion to Amend Judgment set for March 12, 2010 is vacated. The hearing on Defendants' attorneys' fees motion, set for the same date and time, shall remain on calendar.

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<sup>1</sup>The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c).

1 **II. BACKGROUND<sup>2</sup>**

2 **A. The Summary Judgment Order**

3 In its Summary Judgment Order, the Court ruled on two summary judgment motions by  
4 Defendants, as well as Plaintiff's motions to amend and for further discovery. The Court ruled in  
5 favor of Defendants on both summary judgment motions, finding that all of Plaintiff's claims were  
6 barred, in their entirety, under the doctrine of laches and further, that Plaintiff's claims failed, as a  
7 matter of law, to the extent they were based on Defendants' alleged incorporation of Plaintiff's RTK  
8 software into Defendants' Discovery Cracker product. In the same order, the Court denied a request  
9 by Plaintiff for additional discovery under Rule 56(f) of the Federal Rules of Civil Procedure on the  
10 grounds that the discovery sought by Plaintiff would not change the Court's result and that Plaintiff  
11 had not acted diligently in pursuing discovery.

12 **B. The Motion to Amend Judgment**

13 In its Motion to Amend, Plaintiff argues that the Court should reconsider its order granting  
14 summary judgment in favor of Defendants on the basis of purportedly new evidence. Defendants  
15 oppose the motion on the basis that the evidence was produced to Plaintiff on September 17, 2009,  
16 that is, seven weeks before the hearing on the summary judgment motion. Defendants argue further  
17 that even if the Court were to consider this evidence, it would not justify a different result and notes  
18 that at the November 6 hearing, the Court expressly addressed Plaintiff's "new" evidence and found  
19 that it did not provide a basis for denying summary judgment.

20 **III. ANALYSIS**

21 Under Rule 59(e), reconsideration is appropriate "if the district court (1) is presented with  
22 newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or  
23 (3) if there is an intervening change in the controlling law." *School Dist. No. 1J, Multnomah County,*  
24 *Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Where a party seeks reconsideration on  
25 the basis of newly discovered evidence, "it must show not only that the evidence was unknown to it  
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27 <sup>2</sup>Because the Court's Summary Judgment Order includes a detailed set of undisputed facts, the  
28 Court does not repeat them here.

1 until after the hearing, but also that it could not with reasonable diligence have discovered and  
2 produced such evidence at the hearing.” *Frederick S. Wyle Professional Corp. v. Texaco, Inc.*,  
3 764 F.2d 604, 609 (9<sup>th</sup> Cir. 1985) (citations omitted). “Evidence is not newly discovered if it was in  
4 the party’s possession at the time of . . . judgment or could have been discovered with reasonable  
5 diligence.” *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n. 6 (9th Cir. 1994).

6 Here, Plaintiff brings a motion based on evidence that it received seven weeks before the  
7 hearing. Such evidence is not “new” for the purposes of Rule 59(e). Indeed, some of the evidence  
8 upon which Plaintiff now relies was discussed at the hearing and addressed in the Court’s Summary  
9 Judgment Order. Further, Plaintiff has not shown that it acted diligently in obtaining and analyzing  
10 the evidence upon which it relies in its Motion to Amend Judgment. To the contrary, the Court finds  
11 that Plaintiff was not diligent in analyzing the evidence, which was in its possession weeks before  
12 the hearing.

13 **V. CONCLUSION**

14 The Motion to Amend Judgment is DENIED.

15 IT IS SO ORDERED.

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17 Dated: March 4, 2010

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21 JOSEPH C. SPERO  
22 United States Magistrate Judge  
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